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c 469 Trench Excavators' Protection Act

Ontario

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CHAPTER 469

The Trench Excavators' Protection Act**1.** In this Act,Interpre-
tation

- (a) "chief officer" means the officer of the Department of Labour designated by the Deputy Minister of Labour as chief officer for the purposes of this Act;
- (b) "constructor" means a person who contracts with an owner for the work on a trench, and includes an owner who undertakes the work on a trench;
- (c) "depth" means the vertical dimension from the highest point of an excavation to a point level with the lowest point of the excavation;
- (d) "inspector" means an inspector appointed under this Act or under a municipal by-law for the purpose of enforcing this Act;
- (e) "owner" means the person for whose benefit a trench is to be excavated;
- (f) "regulations" means the regulations made under this Act;
- (g) "trench" means any excavation in the ground where the vertical dimension from the highest point of the excavation to a point level with the lowest point of the excavation exceeds the least horizontal dimension of the excavation, such dimensions being taken in a vertical plane at right angles to the longitudinal centre line of the excavation. R.S.O. 1960, c. 407, s. 1; 1965, c. 133, s. 1.

2. Subject to section 3, this Act and the regulations apply to every trench, including any trench of the Crown or of any agency of the Crown or of any municipality as defined in *The Department of Municipal Affairs Act*. 1965, c. 133, s. 2.

Where Act
appliesR.S.O. 1970,
c. 118**3.** This Act does not apply,

Application

- (a) to any part of a trench where the trench is four feet or less in depth;
- (b) to a trench where the work therein is done only by the owner thereof in person;
- (c) to a trench into which no person is required to enter for any purpose;
- (d) to a part of a trench excavated for a pipe line or conduit

if the trench is mechanically excavated, if the sections of the line or conduit are permanently assembled before being mechanically placed in the trench, and if the trench is mechanically back-filled;

R.S.O. 1970,
c. 274

- (e) to a mine within the meaning of *The Mining Act*;
- (f) to a cutting for the right of way of a highway or railroad;
- (g) to a shaft, tunnel, caisson or coffer dam to which any regulation under subsection 1 of section 11 of *The Department of Labour Act*, as amended or remade from time to time, applies;

R.S.O. 1970,
c. 117

- (h) to an excavation made for the burial of a deceased person. R.S.O. 1960, c. 407, s. 2; 1965, c. 133, s. 3.

Inspectors,
in municipi-
palities

4.—(1) The council of every local municipality shall, by by-law, appoint one or more inspectors to enforce this Act in the municipality. R.S.O. 1960, c. 407, s. 3 (1).

Provincial
inspectors

- (2) There shall be one or more provincial inspectors who shall,
 - (a) instruct, advise and assist municipal inspectors in carrying out their duties under this Act; and
 - (b) enforce this Act and the regulations in territory without municipal organization. 1965, c. 133, s. 4.

Certificate
of appoint-
ment

5.—(1) There shall be issued to every inspector a certificate of appointment signed by the clerk of the municipality or the Deputy Minister of Labour, as the case may be. 1965, c. 133, s. 5, *part, amended*.

Production
of
certificate

(2) When carrying out any of his duties under this Act, an inspector shall produce his certificate of appointment, if such is requested. 1965, c. 133, s. 5, *part*.

Power of
entry

6.—(1) An inspector may enter any land for the purpose of carrying out an inspection under this Act.

Obstruction
of inspector

(2) No person shall obstruct an inspector in the performance of his duties or furnish him with false information. R.S.O. 1960, c. 407, s. 4.

Order of
inspector

7.—(1) Where an inspector finds that any provision of this Act or the regulations is being contravened, he may give such order in writing as he thinks necessary to secure compliance therewith and, until such order is carried out, the work upon that part of the trench in which the contravention occurs shall be suspended, other than such work as is necessary to carry out the order with safety. R.S.O. 1960, c. 407, s. 5 (1); 1965, c. 133, s. 6 (1).

Offence

(2) Every person to whom an order of an inspector is directed

who contravenes or knowingly permits any person under his direction or control to contravene such order or to carry on work in contravention of subsection 1 is guilty of an offence against this Act. R.S.O. 1960, c. 407, s. 5 (2); 1965, c. 133, s. 6 (2).

8.—(1) The constructor shall before commencing work on a trench give notice in writing to an inspector appointed to enforce this Act in the jurisdiction in which the trench is to be excavated stating,

Inspector to be notified of proposed trench

- (a) his name and address and the name and address of the owner of the trench;
- (b) the location of the trench;
- (c) the particulars as to the length, depth and width of the trench;
- (d) the particulars known to the constructor of the type and condition of the soil, and the location of any pipes, conduits or prior excavations in or near the trench;
- (e) the proposed date of commencing work on the trench; and
- (f) the name and address of the person who will be in charge of the work on the trench. 1965, c. 133, s. 7 (1).

(2) Notwithstanding subsection 1, where it is necessary to excavate a trench immediately in order to permit the making of a repair or to take other action to prevent injury to persons or damage to property, work on the trench may be commenced without compliance with subsection 1 but in any such case the notice shall be given to the inspector as soon as practicable. R.S.O. 1960, c. 407, s. 6 (2).

Exception

(3) Where the length of a trench to be excavated is 100 feet or more, a copy of the notice required by subsection 1 shall be given to the chief officer by the constructor before commencing work on the trench. 1965, c. 133, s. 7 (2).

Where chief officer to be notified

9.—(1) Every municipal inspector or, where there is more than one, the senior in appointment shall prepare and submit to his council a report on or before the 31st day of January of each year in respect of the previous calendar year, and such report shall contain,

Annual report of municipal inspector

- (a) the number of inspectors appointed by the municipality;
- (b) the number of notices received under section 8;
- (c) the total length of trenches referred to in the notices received under section 8;
- (d) the number of informations laid for offences under this Act;

- (e) the nature of such offences and the number of convictions made with respect thereto and the penalties imposed;
- (f) the number of persons fatally injured in connection with work on trenches, and the causes of such fatalities;
- (g) the number of orders made under section 7 and the number of work stoppages ordered;
- (h) such other matters as are prescribed.

Idem

(2) Every municipal inspector who submits a report under subsection 1 shall forthwith send a copy thereof to the chief officer. 1965, c. 133, s. 8.

Duties of
constructor

10. It is the duty of a constructor,

- (a) to ensure that this Act and the regulations are complied with;
- (b) at least once in each eight-hour period that a person is working in or near a trench to cause to be inspected by a person well experienced in such work,
 - (i) the condition of the trench,
 - (ii) the shoring and timbering provided for the safety of any person in or near the trench,
 - (iii) the soil or rock piled and equipment stored or used in or near the trench, and
 - (iv) the fences, ladders and other things provided for the safety of any person in or near the trench,

and the person making such inspection shall forthwith take any remedial action that he considers necessary to protect the safety of any person in or near the trench. R.S.O. 1960, c. 407, s. 7; 1965, c. 133, s. 9.

Shoring and
timbering

11.—(1) The sides of all trenches exceeding four feet in depth shall be securely shored and timbered with good quality material in accordance with the regulations and the shoring and timbering shall extend at least one foot above the top of the trench, except that where the inspector gives permission in writing to the person in charge of the work in connection with the trench, the shoring and timbering need not extend above the top of the trench.

Application

(2) Subsection 1 does not apply where the trench is cut in solid rock or where the trench is excavated in hard and solid soil and does not exceed six feet in depth or where the sides of the trench are sloped to within four feet of the bottom of the trench so that the sloped sides of the trench do not have more than one foot of vertical rise to each foot of horizontal run.

Trench with
sloping sides

(3) Where the sides of a trench are sloped as described in subsection 2 but not to within four feet of the bottom of the

trench, the vertical walls of the trench shall be shored and timbered with good quality material in accordance with the regulations and the shoring and timbering shall extend at least one foot above the vertical walls and be fitted with toe-boards to prevent material rolling down the slope and falling into the part of the trench with vertical walls.

(4) Drawings and specifications for the shoring and timbering of all trenches to exceed thirty feet in depth and all trenches to exceed twelve feet in width shall be submitted in duplicate to the inspector appointed to enforce this Act in the jurisdiction in which the trench is to be excavated and the trench shall not be commenced until the drawings and specifications have been approved by the inspector and the shoring and timbering shall conform to such approved plans. Drawings for shoring and timbering

(5) Shoring and timbering shall be carried along with the excavating of a trench but when conditions permit may be done before the excavating commences. When shoring and timbering to be done

(6) Where the shoring and timbering is to be removed on completion of the other work in a trench, such removal shall be done by or under the personal supervision of a person experienced in removing shoring and timbering. Removal of shoring R.S.O. 1960, c. 407, s. 8.

12. Ladders or other means of escape satisfactory to an inspector shall be provided in every trench and such ladders or other means of escape shall be spaced at intervals of not more than fifty feet in each trench and shall extend above the top of the trench. Ladders to be provided R.S.O. 1960, c. 407, s. 9.

13.—(1) Where staging or scaffolding, for handling by hand in relays materials excavated from the trench, is erected independently of the shoring or timbering on the sides of the trench, it shall be structurally adequate to protect persons working thereon or in the trench from collapse of the staging or scaffolding or from falling objects. Staging and scaffolding

(2) Where the staging or scaffolding is attached to the shoring and timbering on the sides of the trench, the shoring and timbering shall be sufficiently reinforced to withstand the additional load thereby imposed on the shoring and timbering. Idem R.S.O. 1960, c. 407, s. 10.

14.—(1) The person in charge of work in connection with a trench shall ensure that only a person experienced in handling explosives shall handle, transport, prepare or use explosives in connection with such work, but a person inexperienced in handling explosives may work under the personal supervision of a person experienced in such work. Explosives 1965, c. 133, s. 10.

(2) The person in charge of work in connection with a trench Posting of names

shall post up in the field office and at the magazines the names of all persons designated to handle, transport, prepare or use dynamite or other high explosives.

Blaster
designated

(3) The person in charge of work in connection with a trench shall designate one person to be in charge of blasting operations in each section of the trench affected by the blasting operations and such designated person shall enforce his orders and directions and supervise the fixing of all charges and all other blasting operations.

Firing
circuits

(4) Every firing circuit in connection with blasting operations shall be broken outside the trench at a point and in a manner satisfactory to an inspector.

Quantity
of high
explosives
in trench

(5) No greater quantity of dynamite or other high explosives than is required for immediate use in a trench shall be taken into a trench. R.S.O. 1960, c. 407, s. 11 (2-5).

Gases in
trench

15.—(1) The person in charge of the work in connection with a trench shall take precautions to ensure that no harmful gases or fumes are present in the trench to such a degree as may endanger the health and safety of persons working therein.

Mechanical
ventilation
required

(2) Where gases and fumes are likely to be present in a trench, or tests show their presence therein, sufficient mechanical ventilation to protect the health and safety of persons working therein shall be provided.

Respiratory
protective
equipment

(3) Where mechanical ventilation may not adequately supply uncontaminated air for a person in a trench, such person shall be provided with and shall use respiratory protective equipment furnishing air from an uncontaminated source. R.S.O. 1960, c. 407, s. 12.

Gases in
trench from
internal
combustion
engine

16. No internal combustion engine shall be operated in a trench unless adequate provisions are made to ensure that exhaust gases and fumes are discharged to a point sufficiently remote from the trench to prevent their return to or accumulation in the trench. R.S.O. 1960, c. 407, s. 13.

Rock-drilling
operations

17. Where rock-drilling operations are carried on in a trench, the person in charge of the work in connection with the trench shall ensure that an adequate supply of water is provided at the drill hole to control the dissemination of dust into the breathing zone of the drill operator or other persons working in the trench. R.S.O. 1960, c. 407, s. 14.

Objects in
or near
trench

18.—(1) No tool, machinery, timber or other object shall be placed in or kept adjacent to a trench in a manner that may endanger the safety of a person in the trench.

(2) No excavated material shall be placed or kept within two feet of the edge of a trench. R.S.O. 1960, c. 407, s. 15. Excavated material

19. No person shall operate a power-driven crane, shovel, back-hoe or any similar machine in such a way that it or any part of its load may pass over a person in or near a trench. 1965, c. 133, s. 11. Power machines

20. The person in charge of the work in connection with a trench shall ensure that no vehicle, machinery or horse is driven or operated or located so close to the edge of a trench in which persons are working as to endanger the stability of the walls of the trench by vibration or otherwise. R.S.O. 1960, c. 407, s. 16. Operation of vehicles, etc., close to trench

21.—(1) No person shall bring any object, including the boom of a crane or its load, within eight feet of an electric power line of more than 750 volts unless he, Objects near power lines

- (a) ensures that the electric supply is disconnected;
- (b) ensures that the conductors are insulated; or
- (c) is using a crane that is equipped,
 - (i) with a device to automatically warn the operator when the boom is within eight feet of a power line, or
 - (ii) with insulation to prevent any electrical hazard to the crane operator or persons in the vicinity.

(2) No person shall operate a power-driven crane, shovel, back-hoe or any similar machine closer than the length of the boom of the machine to a power line of more than 750 volts unless he has a person stationed within his view to warn him of danger from the power line. 1965, c. 133, s. 12. Where signalman required

22.—(1) Such fences, guards or barricades as will prevent persons from falling into a trench shall be provided at or near the sides of all trenches and shall be kept in place at all times except when such fences, guards or barricades will interfere with the excavation or other work being done. Guards and barricades

(2) When operations are suspended and during darkness such fences, guards or barricades as will prevent persons from falling into a trench shall be provided at or near the sides of all trenches and all piles of excavated material or other material, tools and machinery shall be marked by lighted lanterns or flares where necessary to prevent accidents. Idem

(3) This section applies only to a trench in or adjacent to a public or private way. R.S.O. 1960, c. 407, s. 17. Application

23. The person in charge of work in connection with a trench shall ensure that no person shall enter or remain in the trench if Persons entering trenches

any of the provisions of this Act or the regulations with respect to such trench are not complied with. 1965, c. 133, s. 13.

Moving or
altering
fences, etc.

24. No person shall move, alter or destroy any shoring or timbering or any fence, guard or barricade that is required by this Act and the regulations to be provided in connection with a trench for the protection of persons without the permission of the owner of the land on which the trench is excavated or, if the work on the trench is being done by a contractor, without the permission of the contractor. R.S.O. 1960, c. 407, s. 19.

Protective
hats

25. No person shall be in or near a trench unless he is wearing a hat manufactured for the purpose of protecting persons from falling objects. 1965, c. 133, s. 14.

Solitary
workers

26. No person shall work alone in a trench unless another person is on duty outside the trench in close proximity to the part of the trench in which the other person is working. R.S.O. 1960, c. 407, s. 21; 1965, c. 133, s. 15.

Persons
under 16

27. No person under sixteen years of age shall enter or work in a trench. R.S.O. 1960, c. 407, s. 22; 1965, c. 133, s. 16.

Bodily
injury

28.—(1) Where an accident, industrial disease, explosion or fire causes bodily injury to a person in or near a trench whereby he is prevented or is likely to be prevented for three days from working and such occurrence does not require notice to an inspector under section 29, a notice in writing of the occurrence shall be given to the chief officer by the person's employer stating,

(a) the person's name, age and address;

(b) the location, time, nature and cause of the occurrence.

Notice

(2) Such notice shall be given within four days after the occurrence.

Idem

R.S.O. 1970,
c. 505

(3) A true copy of the notice required to be given by an employer to the Workmen's Compensation Board by section 117 of *The Workmen's Compensation Act* may be delivered or mailed to the chief officer as sufficient notice under subsection 1. 1965, c. 133, s. 17, *part*.

Fatal
accidents

29.—(1) Where a workman in or near a trench is killed or is critically injured, his employer shall immediately notify an inspector by telephone, telegram or in person of the occurrence, and shall, within forty-eight hours after the occurrence, send him a written report of the circumstances of the occurrence.

Notice to
chief
officer, etc.

(2) An inspector who receives a notice under subsection 1 shall,

(a) immediately upon receipt thereof, notify the chief officer by telephone, telegram or in person of the occurrence mentioned in the notice;

- (b) immediately upon receipt of the employer's report under subsection 1, send a copy thereof to the chief officer; and
- (c) forthwith investigate the circumstances of the occurrence and, where practicable, determine the cause or causes of the occurrence, and report in writing thereon to the chief officer with his recommendations for preventing a repetition of the occurrence and, where the inspector is a municipal inspector, send a copy of the report to the council of his municipality.

(3) Where a person in or near a trench is killed or is critically injured, no person shall, except for the purpose of, Disturbance of wreckage

- (a) saving life or relieving human suffering; or
- (b) maintaining an essential public utility service or a public transportation system,

interfere with, disturb, destroy, alter or carry away and wreckage, article or thing at the scene of or connected with the occurrence until permission so to do has been given by an inspector. 1965, c. 133, s. 17, *part*.

30. Nothing in this Act affects the authority of a municipality By-laws to pass by-laws relating to matters mentioned in this Act or affects any such by-law in so far as it imposes additional or more stringent requirements than those imposed by this Act and the regulations. R.S.O. 1960, c. 407, s. 23.

31.—(1) Every person who contravenes any provision of this Act or the regulations is guilty of an offence and on summary conviction is liable to a fine of not more than \$1,000 or to imprisonment for a term of not more than twelve months, or to both. Offence

(2) Every person who is convicted of an offence against subsection 2 of section 7 is, in addition to the penalties mentioned in subsection 1, liable to a fine of not more than \$100 a day for every day upon which the contravention continued after such order was given. Additional penalty

(3) Where a corporation is convicted of an offence under subsection 1, the maximum penalty that may be imposed is \$5,000 and not as provided therein. 1965, c. 133, s. 18. Penalty for corporations

32. Subject to section 4 of *The Administration of Justice Act*, every fine collected for an offence under this Act committed in a local municipality shall be paid to the treasurer of the local municipality in which the offence was committed, and every fine collected for an offence under this Act committed in territory without municipal organization shall be paid to the Treasurer of Application of fines
R.S.O. 1970, c. 6

Ontario and shall form part of the Consolidated Revenue Fund. R.S.O. 1960, c. 407, s. 25.

Regulations

33. The Lieutenant Governor in Council may make regulations,

- (a) regulating the methods of shoring and timbering and the size, composition and arrangement of materials that shall be used therefor;
 - (b) providing for fees to be paid for the inspection of trenches in territory without municipal organization and for the payment of the expenses of inspectors and prescribing the amounts of such fees and expenses to be paid;
 - (c) providing for fees to be paid for the examination of drawings and specifications of shoring and timbering for trenches in territory without municipal organization required to be submitted to an inspector for approval, and prescribing the amounts of such fees;
 - (d) respecting any matter necessary or advisable to carry out effectively the intent and purpose of this Act.
- R.S.O. 1960, c. 407, s. 26.
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